IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 10TH SEPTEMBER 2007 / 19TH BHADRA 1929

Crl.L.P..No. 583 of 2007()

CC.439/2001 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER/COMPLAINANT

S.D.GOPAKUMAR, S/O. DIVAKARAN, AGED 35,
LECTURER, ROOM NO.5, CHAVARA HOSTEL,
NEAR SACRET HEART'S COLLEGE, THEVARA, REP. BY
POWER OF ATTORNEY HOLDER, K.SREEDHARAN, S/O.
KESAVAN, AGED 64, SREEVASANTH, HOUSE NO.3,
SREEVILAS LANE, KOWDIAR P.O., THIRUVANANTHAPURAM.

BY ADV. SRI.C.A.CHACKO
SMT.C.M.CHARISMA
SRI.N.A.SHAFEEK

RESPONDENTS: ACCUSED & STATE

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1. GIRIJA, W/O. B.C.BABU,
RAKENDU, T.K.DIVAKARAN ROAD, MUTTADA P.O.,
TRIVANDRUM.

2. THE STATE OF KERALA, REP. BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.D.PEETHAMBARAN FOR R1
P.P.SRI.PUZHAKKARA MOHAMMED FOR R2

THIS CRIMINAL LEAVE PETITION HAVING BEEN FINALLY HEARD ON 10/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K. Thankappan, J.

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Crl.L.P. No. 583 of 2007

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Dated this the 10th day of September, 2007

O R D E R

This is a petition to special leave to appeal filed by the complainant in C.C.No.439/2001 on the file of the Court of the Chief Judicial Magistrate, Ernakulam. In the complaint it is stated that the 1st respondent borrowed an amount of Rs.1,00,000/- from the petitioner and towards payment of that amount, she issued Ext.P1 cheque to the petitioner and when the cheque was presented for encashment, it was dishonoured due to insufficiency of funds. After complying the statutory formalities, the complaint has been filed. Power of attorney holder viz., father-in-law of the petitioner, was examined as PW1 and Exts.P1 to P7 were marked. After closing the prosecution evidence, the 1st respondent was questioned under section 313 Cr.P.C. She denied the transaction. After considering the entire evidence the trial court found that except the hearsay evidence of PW1 about the alleged transaction and the execution of the cheque no other evidence is adduced by the petitioner to prove the transaction and hence the complainant failed to prove that the 1st respondent had borrowed an amount

of Rs.1,00,000/- from him and issued Ext.P1 cheque in order to discharge that debt or liability. Hence, the 1st respondent was acquitted. Aggrieved by the above, the petitioner has approached this Court.

2. Heard the learned counsel for the appellant and perused the materials placed on records.

3. The specific case set up by the petitioner is that the 1st respondent borrowed an amount of Rs.1,00,000/- from the petitioner and towards payment of that amount, she issued Ext.P1 cheque dated 28-12-1999 drawn on the Indian Bank, Pavithrewsaran, Puthoor Branch for an amount of Rs.1,00,000/- to the petitioner and when the cheque was presented for encashment, it was dishonoured due to insufficiency of funds in the account of the 1st respondent. PW1, power of attorney holder of the petitioner, had given evidence to prove the transaction. It has come out in evidence that PW1 has no direct knowledge about the transaction between the petitioner and the 1st respondent. When the 1st respondent denied the transaction and issuance of Ext.P1 cheque, petitioner is bound to prove the transaction and issuance of the cheque. But, the petitioner failed to prove that the 1st respondent had borrowed an amount of rs.1,00,000/- from the petitioner and issued Ext.P1 cheque in order to discharge the above debt.

4. In the above circumstances, this Court is of the view that the findings of the trial court are on evidence and they require no interference by this Court. Hence, leave to appeal is rejected.

K. Thankappan,
Judge.

mn.

K.Thankappan,J.

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Crl.l.P.No. /200

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ORDER

-6-2007